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January 8, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (ES) (CLW)

Dear Special Master Wolfson:

Defendant Save On SP, LLC (“**SaveOn**”) replies to Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”)’s January 4, 2024 opposition to SaveOn’s December 28, 2023 letter regarding its pending request to compel J&J to designate five additional custodians.

Judge Waldor did not rule on this request. J&J points to nothing in her November 7 Order, Dkt No. 173, or otherwise, that did so. There was thus no ruling for her to reconsider, as J&J suggests. Even if she had denied the request, SaveOn could move for reconsideration now based on documents produced after the Order, *see Omega S.A. v. Giftland Co.*, No. CIV. 06-

4580(WJM), 2008 WL 4890173, at *1–2 (D.N.J. Nov. 12, 2008), such as those addressed in its December 28, 2023 letter, which Your Honor could resolve. Dkt. No. 184.¹

Scott White and Blasine Penkowski. SaveOn’s Exhibit 1—which Archbow confirmed is [REDACTED]—[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. While J&J says it “appears” that [REDACTED]
[REDACTED]. Even if
Exhibit 1 referred [REDACTED]
[REDACTED]
[REDACTED].² J&J does not substantiate its claim that their documents would be cumulative of other custodians’; it has neither collected nor run search terms over their documents showing how many unique documents they have for review. Dkt. No. 165 Ex. 7.

¹ Contrary to J&J’s assertions, SaveOn told it several times that the November 7 Order did not address the five custodians, including (1) in the parties’ meet-and-confer on November 27, 2023, prompting J&J to reserve its rights regarding the custodians, Ex. 16 (Nov. 28, 2023 Letter); (2) during the December 21, 2023 conference before Your Honor; and (3) in emails on December 22, 2023. Ex. 17 (Dec. 22-26, 2023 Emails between J. Long and E. Snow).

² J&J did not produce the document that it now cites [REDACTED]
[REDACTED], disclosing it for the first time as an exhibit to its opposition. J&J’s Ex. 1. J&J had no apparent basis to withhold this document: It is from the relevant time period, includes emails from a J&J custodian ([REDACTED]), includes multiple agreed search terms, and is responsive to multiple SaveOn document requests—including for all communications regarding SaveOn and J&J’s response to SaveOn and similar companies.

White. Newly produced documents reveal new information about White, [REDACTED]

[REDACTED]

[REDACTED] Ex. 2; [REDACTED], *see* Dkt. No.

165 Exs. 39-46. Exhibits 3 and 4 show that [REDACTED]

[REDACTED]

[REDACTED] Exs. 3 & 4. Previously produced documents showed that [REDACTED]

[REDACTED]. Dkt. No. 165 Ex. 33. While J&J says the new documents are not “unique” to White, [REDACTED]

[REDACTED] hence he likely has unique, responsive documents.

Penkowski. Newly produced documents confirm Penkowski’s relevance: Exhibits 5 to 7 show her role in responding to [REDACTED] a term that J&J used internally to refer to SaveOn, *see* Ex. 18 (JJHCS_00027234), and that J&J used to describe SaveOn in its Complaint, Compl. ¶ 50 n.7, so Penkowski’s official response on behalf of J&J to accumulators is relevant. SaveOn’s denial that it is an accumulator does not change that J&J called it one. Exhibit 8 shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibits 9 and 10 [REDACTED]

[REDACTED]

Karen Lade. Newly produced documents show Lade’s involvement with J&J’s response to [REDACTED] Exs. 11-13, both terms that J&J used to refer to SaveOn, Ex. 18 (JJHCS_00027234) ([REDACTED]); Ex. 19 (JJHCS_00006991)

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([REDACTED]). While J&J says that SaveOn was “largely unknown” in 2017 and 2018, [REDACTED], Ex. 20 (SOSP_0524936) (attaching Ex. 21 (SOSP_0524937)), a [REDACTED] [REDACTED], Ex. 22 at 8 (JJHCS_00081467 at -474), and, [REDACTED] [REDACTED] Ex. 23 (SOSP_0026532). While J&J says Lade is unlikely to have unique documents, it has not collected her documents or run search terms to back up that claim.

Juliette Deshaies. J&J concedes that Deshaies worked on marketing at least one of the drugs at issue. It does not contest that newly produced documents demonstrate that [REDACTED] [REDACTED] [REDACTED]. See Ex. 15.

SaveOn appreciates the Court’s attention to this matter.

Respectfully submitted,

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Attorneys for Defendant Save On SP, LLC

Exhibit 16



November 28, 2023

Julia Long
(212) 336-2878

BY EMAIL

Meredith Nelson, Esq.
Selendy Gay Elsberg PLLC
1290 Avenue of the Americas
New York, NY 10104

**Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC,*
2:23-cv-02632 (ES) (CLW)**

Dear Meredith:

We write to memorialize our November 27, 2023 meet and confer concerning SaveOnSP's Responses and Objections to JJHCS's Ninth Set of Requests for Production and various topics related to the Court's November 7, 2023 Order.

I. JJHCS's Requests for Production Nos. 95 and 96

JJHCS's RFP Nos. 95 and 96 request all documents and communications concerning SaveOnSP's employee confidentiality obligations and any communications with SaveOnSP employees relating to compliance with or attestation to SaveOnSP's employee confidentiality policies. You have refused to produce documents and communications responsive to either RFP.

During the meet and confer, we explained the relevance of these policies, including that SaveOnSP's employee confidentiality obligations bear directly on measures that SaveOnSP has used to prevent its employees from communicating with JJHCS and others with regard to SaveOnSP's conduct at issue in this action. SaveOnSP's own Response to Interrogatory No. 18 confirms this to be true; indeed, in SaveOnSP's Response to Interrogatory No. 18, [REDACTED]

[REDACTED] See SaveOnSP Response to JJHCS Interrogatory No. 18. The relevance of these policies and any documents or communications relating to them is conceded by the reference to them in SaveOnSP's own interrogatory responses and therefore indisputable. In our call, you offered no valid basis for refusing to produce these documents. Nor have you articulated any reasonable burden argument to producing the requested documents, let alone to the production of the two policies.

Meredith Nelson, Esq.
November 28, 2023
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In light of the above, please reconsider your position and produce all documents and communications concerning your employees' confidentiality obligations, including the two policies identified above. If you are unwilling to do so, we will consider the parties at impasse on this issue. Please provide a response by December 5, 2023.

II. Custodians

As discussed during our meet and confer, the Court's November 7 Order directs JJHCS to add six of the seven "CAP" custodians (Kinne, Longbothum, Shontz, Barklage, Hoffman, Platt, and Wyszkowski) and directs the parties to "meet and confer regarding the identities of the additional custodians and to work out any necessary logistics." (ECF No. 173 at 2.) During the meet and confer, SaveOnSP requested that JJHCS add Kinne, Longbothum, Shontz, Barklage, Hoffman, and Platt as CAP custodians. JJHCS agrees to do so, and will review documents hitting on the search strings below for these CAP custodians for the time period January 1, 2022 to November 7, 2023:

- ("CAPa" OR "CAPm" OR "adjustment program") AND (SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp)
- ("CAPa" OR "CAPm" OR "adjustment program") AND "Save On" (case sensitive)

(See ECF No. 173 at 3.) To be clear, JJHCS reserves all rights, including with respect to the remaining custodians at issue in the parties' October 25, 2023 joint letter. (See ECF No. 165.)

III. Terms & Conditions

The Court's November 7, 2023 Order further states that "Defendant shall continue to narrow the scope of its requests" with respect to "Docket Entry Nos. 146 (regarding CarePath Terms and Conditions) and 150 (seeking financial information and data on patient drug adherence)." (ECF No. 173 at 1.) As discussed, SaveOnSP's November 3 proposal, which "repeat[s]" prior requests that "JJHCS identify the predecessor programs from which the 'other offer' provision was drawn and identify the employees and documents sources for those programs" without a time period limitation, does not follow this directive.

We look forward to receiving your proposal containing narrowed requests for production as to CarePath's Terms and Conditions by December 5.

IV. Document Refresh

At the end of our call, SaveOnSP briefly raised the issue of the parties' document refresh. On this point, the Court's Order is unambiguous: it requires both parties to update their document productions "*without limitation*" through November 7, 2023. (See ECF No. 173 at 3.) JJHCS is doing what the Court ordered. JJHCS will refresh its production of documents using all previously agreed-upon search terms for all previously agreed-upon JJHCS custodians through the date of the Court's Order. Indeed, following the Court's Order, JJHCS immediately began

Meredith Nelson, Esq.
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collecting and processing this data so that it could be promptly reviewed and produced, which will in turn allow the parties to complete fact discovery by April 25, 2024, as the Court has ordered us to do. By December 5, please confirm that SaveOnSP is doing the same, *i.e.*, please confirm that:

- SaveOnSP has completed a full collection of every custodian's documents through November 7, 2023;
- SaveOnSP will supplement its production of documents using all previously agreed-upon search terms for all previously agreed-upon SaveOnSP custodians through that date; and
- SaveOnSP is making every effort to produce these documents expeditiously, so that the parties can complete fact discovery—including fact witness depositions—by April 25, 2024.

* * * *

We remain available to meet and confer.

Very truly yours,

/s/ Julia Long
Julia Long

Exhibit 17

Elizabeth Snow

From: Long, Julia (x2878) <jlong@pbwt.com>
Sent: Tuesday, December 26, 2023 9:20 AM
To: Elizabeth Snow; David Elsberg; Andrew Dunlap; Meredith Nelson; Wohlforth, E. Evans
Cc: Mangi, Adeel A. (x2563); Sandick, Harry (x2723); LoBiondo, George (x2008); Arrow, Sara (x2031); ~jgreenbaum@sillscummis.com; ~klieb@sillscummis.com; _cg J&J-SaveOn
Subject: RE: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Elizabeth,

We do not agree with you that the custodians motion has not been fully decided—it has been decided, and the Court ordered the production of some documents from several custodians. That said, we have no objection to Judge Wolfson seeing the papers you added to the Box folder on Friday.

We will send to Mr. Fang, copying your team, today.

Best,
Julia

Julia Long
She | Her | Hers
Associate

Patterson Belknap Webb & Tyler LLP
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T 212.336.2878

jlong@pbwt.com

From: Elizabeth Snow <esnow@selendygay.com>
Sent: Friday, December 22, 2023 4:12 PM
To: Long, Julia (x2878) <jlong@pbwt.com>; ~delsberg@selendygay.com <delsberg@selendygay.com>; Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>
Cc: Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>; _cg J&J-SaveOn <JJSaveOn@pbwt.com>
Subject: Re: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Caution: External Email!

Julia,

Judge Wolfson requested the open motions and the documents cited in those motions. The Box was missing SaveOn's motion to compel additional custodians, which has not yet been fully decided. That motion cites other motions from the October 30, 2023 conference and the June 20, 2023 joint letter (all filed under seal). Similarly, two motions uploaded by JJHCS refer to the February 24, 2023 joint letter. SaveOn uploaded those documents to ease Judge Wolfson's review.

Thanks,

Elizabeth

Elizabeth Snow

Associate [\[Email\]](#)

Selendy Gay Elsberg PLLC [\[Web\]](#)

Pronouns: she, her, hers

[+1 212.390.9330](#) [O]

[+1 540.409.7257](#) [M]

From: Long, Julia (x2878) <jlong@pbwt.com>

Sent: Friday, December 22, 2023 11:41 AM

To: Elizabeth Snow <esnow@selendygay.com>; David Elsberg <delsberg@selendygay.com>; Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Cc: Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; klieb@sillscummis.com <klieb@sillscummis.com>; _cg J&J-SaveOn <JJSaveOn@pbwt.com>

Subject: RE: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Elizabeth:

We noticed that you added several motions to the Box that Judge Waldor already decided, as well as several unsealed docket entries. Could you please confirm your basis for doing so? Our understanding was that Judge Wolfson only wanted briefing on the open motions and transcripts that she did not have access to.

Best,

Julia

Julia Long

She | Her | Hers

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From: Elizabeth Snow <esnow@selendygay.com>

Sent: Friday, December 22, 2023 2:28 PM

To: Long, Julia (x2878) <jlong@pbwt.com>; delsberg@selendygay.com <delsberg@selendygay.com>; Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Cc: Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; klieb@sillscummis.com <klieb@sillscummis.com>; _cg J&J-SaveOn <JJSaveOn@pbwt.com>

Subject: Re: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Caution: External Email!

Julia,

Thank you for creating the secure Box link. For completeness and to comply with the Court's wishes, we have uploaded the additional outstanding joint letter regarding custodians, and documents to which those sealed joint letters refer. You have our approval to share the complete Box with Mr. Fang.

Thanks,

Elizabeth

Elizabeth Snow

Associate [Email]

Selendy Gay Elsberg PLLC [Web]

Pronouns: she, her, hers

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[+1 540.409.7257](tel:+15404097257) [M]

From: Long, Julia (x2878) <jlong@pbwt.com>

Sent: Thursday, December 21, 2023 11:36 PM

To: Elizabeth Snow <esnow@selendygay.com>; David Elsberg <delsberg@selendygay.com>; Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Cc: Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; klieb@sillscummis.com <klieb@sillscummis.com>; _cg J&J-SaveOn <JJSaveOn@pbwt.com>

Subject: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Elizabeth,

Following today's status conference before Judge Wolfson, we pulled together the transcripts from prior conferences before Judge Waldor and the briefing on open discovery motions. The materials can be found at the secure Box link below, which I have shared with you and your colleagues copied here.

[REDACTED]

We ask that you please confirm by 2:00 p.m. tomorrow that we have your consent to send these materials to Mr. Fang. Per Judge Wolfson's request, we also have included a copy of the Protective Order.

Best,

Julia

Julia Long

She | Her | Hers

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